

Senate Bill No. 1364

CHAPTER 224

An act to amend Sections 314, 454, 587, 797, and 798 of the Public Utilities Code, relating to water corporations.

[Approved by Governor August 29, 2012. Filed with
Secretary of State August 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1364, Huff. Water corporations.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, gas corporations, telephone corporations, and water corporations, as defined. The Public Utilities Act authorizes the PUC, each commissioner, and each officer and person employed by the PUC at any time to inspect the accounts, books, papers, and documents of any public utility. This authorization applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation.

This bill would additionally authorize the inspection of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds controlling interest in, a water corporation that has 2,000 or more service connections.

(2) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. With certain exceptions, whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate for the services or commodities furnished by it, existing law requires that the corporation furnish its customers notice of its application to the PUC for approval of the new rate.

This bill, for a water corporation with more than 2,000 service connections, would require the notice to include estimated rate impacts on the various customer classes of the corporation. The bill would authorize the commission to require the water corporation to inform customers of the outcome of the general rate case, as prescribed.

(3) Existing law requires every electrical, gas, and telephone corporation to annually prepare and submit to the PUC a report describing all significant transactions between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation. Existing law requires that the report identify the nature of the

transactions and the terms and conditions applying to them, including the basis upon which cost allocations and transfer pricing were established for the transactions. Existing law requires the PUC to periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, that electrical, gas, or telephone corporation. Existing law authorizes the commission to utilize the services of an independent auditor, to be selected and supervised by the commission.

This bill would make these requirements applicable to water corporations with more than 2,000 service connections. The bill would authorize the commission to direct a water corporation with more than 2,000 service connections, or an electrical, gas, or telephone corporation, to utilize the services of an independent auditor, to be selected and supervised by that water, electrical, gas, or telephone corporation.

(4) If the PUC finds and determines that any electrical, gas, or telephone corporation has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation in violation of any rule or order of the PUC, and the corporation has sought to recover the payment in any proceeding before the PUC, existing law authorizes the PUC, following a hearing, to levy a penalty against the corporation not to exceed 3 times the required or prohibited payment if the PUC finds that the payment was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation.

This bill would extend this authority to water corporations with more than 2,000 service connections.

(5) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and certain provisions of the bill would extend existing requirements to water corporations, the bill would impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 314 of the Public Utilities Code is amended to read:

314. (a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each

commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

SEC. 2. Section 454 of the Public Utilities Code is amended to read:

454. (a) Except as provided in Section 455, a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it, the corporation shall furnish to its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the commission in accordance with commission procedures for this means of submission. The procedures for advice letters may include provision for notice to customers or subscribers on a case-by-case basis, as determined by the commission. The corporation may include the notice with the regular bill for charges transmitted to the customers within 45 days if the corporation operates on a 30-day billing cycle, or within 75 days if the corporation operates on a 60-day billing cycle. If more than one application to change any rate is filed within a single billing cycle, the corporation may combine the notices into a single notice if the applications are separately identified. The notice shall state the amount of the proposed rate change expressed in both dollar and percentage terms for the entire rate change as well as for each customer classification, a brief statement of the reasons the change is required or sought, and the mailing, and if available, the email address of the commission to which any customer inquiries may be directed regarding how to participate in, or receive further notices regarding the date, time, or place of, any hearing on the application, and the mailing address of the corporation to which any customer inquiries relative to the proposed rate change may be directed.

(b) For a water corporation with more than 2,000 service connections, the notice required in subdivision (a) shall include estimated rate impacts on the various customer classes of the corporation. The commission may require the corporation to inform customers in a separate letter or through a bill insert, at the corporation's discretion, of the outcome of the general rate case, within 60 days if the corporation operates on a 30-day billing cycle, or within 90 days if the corporation operates on a 60-day billing cycle, of the commission's final decision, including the approved rates and the approved capital projects that will subsequently be executed by way of an advice letter.

(c) The commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the showing, with or without a hearing, and the procedure to be followed in the consideration thereof. Rules applicable to common carriers may provide for the publication and filing of any proposed rate change together with a written showing in support thereof, giving notice of the filing and showing in support thereof to the public, granting an opportunity for protests thereto, and to the consideration of, and action on, the showing and any protests filed thereto by the commission, with or without hearing. However, the proposed rate change does not become effective until it has been approved by the commission.

(d) The commission shall permit individual public utility customers and subscribers affected by a proposed rate change, and organizations formed to represent their interests, to testify at any hearing on the proposed rate change, except that the presiding officer need not allow repetitive or irrelevant testimony and may conduct the hearing in an efficient manner.

SEC. 3. Section 587 of the Public Utilities Code is amended to read:

587. Every water corporation with more than 2,000 service connections, and every electrical, gas, and telephone corporation shall annually prepare and submit to the commission a report describing all significant transactions, as specified by the commission, between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the water, electrical, gas, or telephone corporation. The report shall identify the nature of the transactions and the terms and conditions applying to them, including, but not limited to, the basis upon which cost allocations and transfer pricing were established for the transactions.

SEC. 4. Section 797 of the Public Utilities Code is amended to read:

797. The commission shall periodically audit, or direct that an independent audit be periodically conducted for, all significant transactions, as specified by the commission, between a water corporation with more than 2,000 service connections, or an electrical, gas, or telephone corporation, and every subsidiary or affiliate of, or corporation holding a controlling interest in, that water, electrical, gas, or telephone corporation. The commission, in this connection, may utilize the services of an independent auditor, who shall be selected and supervised by the commission, or may direct a water corporation with more than 2,000 service connections, or an

electrical, gas, or telephone corporation, to utilize the services of an independent auditor, who shall be selected and supervised by that water, electrical, gas, or telephone corporation. Nothing in this section prohibits the commission from auditing any transaction between a water corporation with more than 2,000 service connections, or an electrical, gas, or telephone corporation, and any subsidiary or affiliate of, or corporation holding a controlling interest in, that water, electrical, gas, or telephone corporation, as otherwise permitted or required by law.

SEC. 5. Section 798 of the Public Utilities Code is amended to read:

798. (a) Whenever the commission finds and determines that any water corporation with more than 2,000 service connections, or an electrical, gas, or telephone corporation, has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the water, electrical, gas, or telephone corporation in violation of any rule or order of the commission, adopted and published by the commission prior to the transaction but after notice to, and an opportunity to comment by, the affected corporation, and the corporation has sought to recover the payment in any proceeding before the commission, the commission, following a hearing, may levy a penalty against the corporation not to exceed three times the required or prohibited payment, as the case may be, if the commission finds that the payment, in whole or part, was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation. This penalty is in addition to any criminal penalties which may apply.

(b) In determining whether to impose a civil penalty under this section, the commission may take into consideration multistate public utility diversification activities involving cross-subsidization which are permissible in other states or under federal jurisdiction although in violation of the commission's rules and orders.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.